

**VOLUNTARY CLEANUP CONTRACT
09-5797-NRP**

**IN THE MATTER OF
FORMER DOWBRANDS, INC. SITE, GREENVILLE COUNTY
and
STEVE AND TIFFANY GILLIAM**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Steve and Tiffany Gilliam, with respect to the Property located at 300 South Main Street (SC Highway 417), Mauldin, South Carolina. The Property includes approximately 22.46 acres identified by Tax Map Serial Number M004010101700.

In entering this Contract, the Department relies on the representations of the "Information and Certification" of January 26, 2009 by Steve and Tiffany Gilliam, which is incorporated into this Contract and attached as Appendix A.

AUTHORITY

This contract is entered pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code § 44-56-710-760, as amended on June 11, 2008; the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-10, et. seq., and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq.

DEFINITIONS

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them in applicable S.C. statutes, as amended and regulations promulgated thereto, including but not limited to the authorizing statutes above, the S.C. Pollution Control Act, S.C. Code § 48-1-10, et. seq., the S.C. State Underground Petroleum Environmental Response Bank Act § 44-2-10, et. seq., or in CERCLA if not set forth in the above statutes.

A. "S&TG" means Steve and Tiffany Gilliam.

- B. "Beneficiaries" means S&TG's Non-Responsible Party lenders, parents, managers, members, employees, subsidiaries, assigns and successors, including new purchasers, lessees, heirs, devisees, and other parties acquiring an interest in any portion of the Property, but only to the extent that such parties have never been a Responsible Party at the Site.
- C. "Contract" means this Voluntary Cleanup Contract.
- D. "Department" means the South Carolina Department of Health and Environmental Control, or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- E. "Existing Contamination" shall mean any contamination including pollutants or contaminants, petroleum or petroleum products, or hazardous substances present on, or under, the Site as of the execution date of this Contract.
- F. "Property" means the real property as described in the Information and Certification attached as Appendix A, and that is subject to the ownership, prospective ownership, or possessory or contractual interest of S&TG. The Property is bounded generally by S. Main Street (SC Highway 417) to the north, Golden Strip Drive and Cognis Corporation to the south - southeast, and SC Highway 276 to the west.

FINDINGS

2. Based on the information known by the Department, the following are asserted for this Contract:

- A. Owners and Operators: The historical owners and operators of the Property are as follows:

B.E. Greer

Early 1900's – 1952

William R. Timmons

1952 – 1956

Texize Chemicals

1956 – 1968

Norwich Pharmaceuticals (Norwich purchased Texize Chemicals, which was later purchased by Morton Thiokol) 1968 - 1985

Dow Chemicals (purchased the assets of the Texize Division of Morton Thiokol) 1985 – Present

Property has been operated under The Dow Chemical Company, Texize Division; Dow Consumer Products, Inc.; DowBrands, Inc.; and DowBrands, L.P.

- B. Property and Surrounding Areas: In or around 1956, the Property was developed by Texize Chemical Company ("Texize"). Texize manufactured textile sizing, pine oil-based degreasing cleaner, and other related chemicals. Two wastewater treatment lagoons, Lagoons 1 and 2, were used from 1956 until approximately 1986.
- C. In 1968, Norwich Pharmaceuticals purchased Texize. Norwich Pharmaceuticals later merged with Morton International, Inc. and the surviving company was called Morton-Norwich Products, Inc., later known as the Texize Division of Morton-Thiokol, Inc. and Norwich-Eaton Pharmaceuticals.
- D. In 1983, Morton-Thiokol, Inc. constructed a pretreatment facility (located north of South Main Street) to manage wastewater from the Site. As part of the construction permit, the Department required the clean closure of Lagoons 1 and 2. The lagoon closure activities were delayed until 1986.
- E. In or around 1985 or 1986, The Dow Chemical Company asserts that it purchased the assets, but not the environmental liabilities arising from pre-acquisition operations, of Morton-Thiokol's Texize Division.

- F. DowBrands, Inc. manufactured dodecylbenzene sulfonic acid, sodium laureth sulfate, and alkyl ether sulfate, as well as detergents, cleaners, bleach, stain removers, and floor wax.
- G. In 1986, sludge samples were recollected from the two lagoons and analyzed for volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), RCRA metals, pesticides, and herbicides. Chloroform and methylene chloride were detected at concentrations less than regulatory thresholds for toxicity characteristic. The sludge was excavated and disposed and the lagoons were backfilled with clean clay soil.
- H. In 1987, groundwater samples were collected at four new monitoring wells, MW-1, MW-2, MW-3, and MW-4, and sampled for a limited suite of parameters. Analytical results for the limited suite of parameters did not indicate any impacts to groundwater above applicable Maximum Contaminant Levels (MCLs).
- I. In December 1987, the Department requested additional sampling of the monitoring wells and analytical results indicated the presence of chlorinated volatile organic compounds (CVOCs) above MCLs. Detections were also found at the up-gradient Cognis facility (then known as Henkel Corporation) property and the Department deferred its recommendations until Cognis facility's groundwater contamination was better characterized.
- J. On or around December 12, 1991, DowBrands, Inc., a Delaware corporation, purchased the Site Property from its parent corporation, The Dow Chemical Company. (Deed Book 1457, page 581.) This deed records the principal place of business for DowBrands, Inc. as 9550 Zionsville Road, Indianapolis, IN 46268; while the principal place of business for Dow is recorded as 2026 Dow Center, Midland, MI.

- K. On December 18, 1991, DowBrands, Inc. leased the Site Property to DowBrands, L.P. (Unrecorded Commercial Lease) and a later Memorandum of Lease was recorded on May 13, 1992. (Book 1473, page 868.)
- L. DowBrands, Inc. was a manufacturer of household cleaning products. DowBrands, Inc. operated a small pretreatment facility for the disposal of aqueous mixtures of its products. This wastewater contained spills from bottling equipment, washing of equipment, and other related activities. DowBrands, Inc. discharged this wastewater to the sanitary sewer that flowed to the Gilder Creek Wastewater Treatment Plant.
- M. In 1996, DowBrands, Inc. ceased operations at the Site Property and the on-site buildings have been vacant or used as warehouse space since 1997.
- N. In 2003 and 2004, the Department received pre-buy assessments, which did not show any contamination above MCLs.
- O. In April 2007, a Phase II environmental site assessment (ESA) was conducted as part of another potential property transaction. Results of groundwater sampling indicated that CVOCs were present in Site groundwater at concentrations exceeding their respective MCLs. Also, as part of the assessment, pesticides were detected in temporary wells TW-2 and TW-5 at concentrations below MCLs. The Department required DowBrands, Inc. to perform additional groundwater and soil sampling as the contaminants found were also used during facility's operations.
- P. The October 2008 Groundwater Assessment Report indicates that concentrations of PCE, TCE, and Chloroform in soil samples exceed Soil Screening Levels (SSLs). The groundwater analytical results indicated detections above MCLs for 1,1-DCE, PCE and TCE.

Q. DowBrands entered into VCC 09-5797-RP on February 3, 2009. A copy of VCC 09-

5797-RP is attached to this Contract as Appendix B.

- R. Party Identification: S&TG are individuals in the State of South Carolina with their principal place of business located at 102 Lakewood Drive, Greenville, South Carolina, 29607. S&TG affirms that it has the financial resources to conduct the response action pursuant to this Contract.
- S. Proposed Redevelopment: S&TG currently lease the property from Dow Chemicals. S&TG sub-lease portions of the Property to other businesses primarily for warehousing. Chemical Connections is a tenant on the Property and is owned by S&TG. Chemical Connections uses portions of the Property for the storage, consolidation, and distribution of detergents. Additionally, Sparks Industries leases a portion of the Property for truck maintenance. S&TG will acquire the Property and intends to continue the current use of the Property.

BONA FIDE PROSPECTIVE PURCHASER STATUS

3. S&TG certify that they are Non-Responsible Parties at the Site and are eligible to be a Bona Fide Prospective Purchaser for the Property.

RESPONSE ACTION

4. S&TG agree to implement response action conducted pursuant to a Work Plan approved by the Department. The Work Plan shall be submitted by S&TG, or its designee, within thirty days of the execution date of this Contract, or later date if approved by the Department's project manager. The Work Plan shall be in accordance with accepted industry standards. All activities undertaken pursuant to this Contract shall be consistent with S.C. statutes and permitting requirements (e.g., stormwater management and waste disposal regulations). S&TG shall identify and obtain the applicable permits before beginning any action. The Work Plan shall set forth methods and schedules for accomplishing response action as specified in all subparagraphs below:

A. Work Plan Logistics:

- 1). The Work Plan(s) shall provide sufficient information about the proposed sampling points, collection methods, analytical methods, and other pertinent details of the response actions.
 - a). Sample collection methodologies shall be consistent with the US EPA Region IV Field Branches Quality System and Technical Procedures (<http://www.epa.gov/region4/sesd/fbqstp/>).
 - b). All monitoring wells and groundwater sampling points shall be constructed in accordance with the South Carolina Well Standards and Regulations-R.61-71. The Work Plan shall provide sufficient detail to support issuance of the well approvals.
 - c). The laboratory analyses shall be as required in the media-specific subparagraphs below, but may include: 1) the full EPA-TAL (Target Analytical List); 2) the full EPA-TCL (Target Compound List); 3) the TAL-Metals (EPA-TAL without Cyanide); 4) SVOCs (EPA-TCL Semi-Volatile Organics without Pesticides and Herbicides); or 5) VOCs (EPA-TCL Volatile Organic Compounds).
 - d). All analytical methods shall use appropriate detection levels to allow comparison to media-specific screening criteria listed in the "EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites" in effect at the time of sampling. The applicable Protection of Groundwater SSL (Soil Screening Level) for a compound shall be the "MCL-Based SSL" if listed.
- 2). The Work Plan and all associated reports shall be signed and sealed by a Professional Engineer or Professional Geologist duly-licensed in South Carolina.
- 3). The Work Plan shall include the names, addresses, and telephone numbers of S&TG's consulting firm(s), analytical laboratories, and S&TG's contact person for matters relating to this Contract.
 - a). The analytical laboratory shall possess applicable Certification, as per South Carolina R.61-81, for the test methods to be used during this assessment.
 - b). S&TG shall notify the Department in writing of changes in the contractor or

laboratory.

- 4). The Department will notify S&TG in writing of approvals or deficiencies in the Work Plan.
- 5). S&TG, or its designee, shall respond in writing within thirty days to the Department's comments with regards to deficiencies.
- 6). S&TG shall implement the Work Plan upon written approval from the Department.
- 7). S&TG shall inform the Department at least five (5) working days in advance of all field activities, and shall allow the Department, or its authorized representatives, to take duplicates of any samples if desired.
- 8). S&TG shall preserve items that may: 1) provide evidence of a Potentially Responsible Party's involvement at the site; 2) lead to the discovery of other areas of contamination; or 3) contain environmental information. Such items may include drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site. S&TG shall notify the Department of the location of any such items, and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense prior to destruction of said items.
- 9). Addendums to the Work Plan shall be submitted on an as-needed basis in the event further assessment or corrective measures are required.
 - a). The Department may require additional sample locations or procedures to determine the extent of Existing Contamination, and/or implementation of applicable corrective measures if the assessment activities results exceed the screening criteria.

B. Remove any readily identifiable sources of contamination:

- 1). S&TG shall characterize and remove from the Property any segregated potential sources of contamination and hazardous substances (i.e., drums, tanks, containers, etc.). Sources shall be removed expeditiously upon their discovery at any time during assessment, corrective action, or development activities. The contents of the sources shall be properly reused or disposed in

accordance with regulations.

- 2). S&TG shall immediately notify the Department if a release of contamination occurs or is identified during removal of the sources. S&TG shall assess the impact of the release and take necessary action in accordance with a Department approved plan.

C. Evaluate condition of Building 60 collection sump process lines

- 1). S&TG shall determine if the process lines connected to this sump remain in tact and/or in use. If in use and discharging to the publicly owned treatment works (POTW), S&TG shall ensure that the contaminant levels are acceptable for the discharge to the POTW. If in use and discharging to the environment, S&TG shall take measures to terminate such discharge and collect and analyze samples from all potentially impacted environmental media.

D. Assess soil quality across the Property:

- 1). S&TG shall collect one subsurface soil sample from four locations within the former lagoon areas for a total of four soil samples. All soil samples shall be analyzed for the suite of EPA TAL/TCL parameters.
- 2). One subsurface soil sample shall be collected near the collection sump located near Building 60. This sample shall be analyzed for VOCs, SVOCs, and TAL Metals. pH shall also be measured from each sample due to the historic use of acids in Building 60.
- 3). Surface soil quality results shall be compared to the Residential and Industrial Screening Levels and to the applicable Protection of Groundwater SSL. Subsurface soil results shall be compared to the applicable Protection of Groundwater SSL.

E. Assess groundwater quality:

- 1). S&TG shall assess groundwater quality. Assessment shall include samples from a minimum of two temporary monitoring wells located hydraulically downgradient of Building 60 and the associated collection sump.

- 2). Samples from all monitoring wells shall be analyzed for TAL- Metals, VOCs and SVOCs.
- 3). Groundwater quality results shall be compared to standards in the South Carolina State Primary Drinking Water Regulations, R.61-58, and to the Regional Screening Tables values for "Tapwater", if not specified in R.61-58.

F. Evaluate and control potential impacts to indoor air:

- 1). S&TG shall evaluate potential impacts to indoor air if the Department determines significant concentrations of volatile organic compounds are present in the subsurface. The Department will use a modified Johnson and Ettinger Model to determine "Significant concentrations" based on representative soil and/or groundwater quality results reflective of the Property. The model will be constrained towards predicting commercial exposures consistent with the building construction on the Property.
- 2). This evaluation shall consist of collection and analysis of representative number of soil gas samples from the footprint of the existing buildings on the site. Soil gas samples shall be analyzed for all site related volatile compounds by appropriate methods capable of detecting soil gas concentrations at screening levels indicative of a 10^{-6} risk for shallow gas samples (using an attenuation factor appropriate for the depth of the samples). The applicable screening concentrations shall be based upon the EPA OSWER "Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils" or supplemental EPA guidance.
- 3). S&TG shall submit an addendum to the Work Plan detailing the steps for further study and/or remedial or other control management measures to be implemented if the indoor air concentration exceeds a 10^{-6} risk calculated for occupational exposure (40 hrs/wk, 50 wk/yr, 25 yrs). The Department shall give reasonable consideration of data or other demonstration that shows unacceptable exposures inside the building do not result from the subsurface conditions.

G. Institute reasonable contamination control measures:

- 1). S&TG shall take reasonable measures, approved by the Department and consistent with the intended future use of the Property, to limit or prevent impact to human health or the environment from contamination or hazardous substances present on the Property:
 - a). In excess of appropriate human-health and ecological risk-based exposure standards via the potential routes of exposure;
 - b). In excess of appropriate standards for contaminant migration to groundwater; or,
 - c). In the event that evidence of a continuing source of contamination is identified in the subsurface under the Property. For purposes of this clause, evidence of a continuing source may include finding NAPL (Non-Aqueous Phase Liquids) or dissolved concentrations that are presumptive of a source including chemical concentrations:
 - i. At, or greater than 1% of a chemical's solubility limit in any groundwater sample, or,
 - ii. At levels suggestive of a continuing source of environmental contamination based on technical references, empirical modeling, or other technically defensible method used by the Department.
 - d). The Department may require S&TG to conduct additional assessment to determine the extent of a source of contamination.
 - e). The Department may require S&TG to delineate and control any portion of a source that has migrated beyond the Property if data suggests that source concentrations have migrated.
 - i. S&TG may be required to obtain access onto adjacent properties to delineate and control a source originating from the Property.
 - ii. The Department may assist S&TG in obtaining permission to access the adjacent properties.
 - iii. Upon the Department's determination that access to adjacent properties cannot be obtained through reasonable means, the Department may waive the requirements.

H. Monitor and/or abandon the monitoring wells:

- 1). S&TG shall implement a groundwater-monitoring program if required by the Department based on the results of the groundwater assessment activities. The Department will determine the frequency and duration of the monitoring program on a case-specific basis.
- 2). S&TG shall abandon the monitoring well(s) when the Department determines there are no further needs for wells. The wells shall be abandoned in accordance with R.61-71 of the South Carolina Well Standards.

I. Complete required activities in the event of a Responsible Party default:

- 1). In addition to the work enumerated above, S&TG agrees to fulfill all requirements of the Responsible Party contract should the Responsible Party fail to comply with the requirements of VCC-5797-RP.
- 2). Ongoing Responsible Party activities under VCC 09-5797- RP may substantially satisfy the requirements in Paragraph 4.B, F, G, and H above. Therefore, it is agreed that response action completed by the Responsible Parties that meet the conditions of this Contract shall be deemed to satisfy the requirements on S&TG. The Department shall have sole discretion in determining the adequacy of the Responsible Party's response action towards completing the activities required by this Contract.
- 3). The Department will provide written notification to S&TG if more than 180 consecutive days elapse without substantial progress, or the Department otherwise determines the Responsible Party activities are inadequate.
- 4). S&TG shall respond in writing within thirty days to the Department's notification with a workplan for completing the unfulfilled requirements of this Contract.

HEALTH AND SAFETY PLAN

5. S&TG shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan consistent with Occupational Safety and Health Administration regulations. S&TG agrees that the Health and Safety plan is submitted to the

Department only for informational purposes. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by S&TG.

PUBLIC PARTICIPATION

6. S&TG and the Department will foster public participation to implement this Contract as follows:

A. The Department will seek public comment and initiate a thirty-day claim contribution notification period in accordance with established procedures consistent with S.C. statutes upon signature of this Contract by S&TG.

B. S&TG shall erect a sign at major entrances onto the Property or other locations routinely accessible by the public. The sign(s) shall be erected within one day of the Department's public announcement about the Contract in a newspaper of general circulation in the community.

1). The sign will state "Voluntary Cleanup Project by Steve and Tiffany Gilliam under Voluntary Cleanup Contract 09-5797-NRP with the South Carolina Department of Health and Environmental Control." The sign shall provide a brief description of the scope of activities under the Contract, and contact information, including telephone number and address, for a representative of S&TG. Contact information for the Department shall state "TOLL-FREE TELEPHONE: 1-866-576-3432".

2). All sign lettering must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the site without intruding onto the Property.

3). S&TG shall submit photographs of the sign and a Property drawing showing the location(s) of the signs. The photographs shall be submitted to the Department within 10 days of erecting the sign.

4). S&TG agrees to revise the sign if the Department determines the sign is inaccurate, not legible, or otherwise ineffectively placed.

5). S&TG shall maintain the sign(s) in legible condition and at visible locations

throughout the duration of the contract period until a Certificate of Completion is issued on the Property.

- 6). The sign(s) may be removed to accommodate building or grading activities; however, S&TG shall restore the sign within two days to its original location, or other publicly accessible location upon notice to the Department.

PROGRESS UPDATES

7. S&TG shall submit periodic written updates to the Department's project manager until such time as all activities are complete pursuant to this Contract. The first update shall be due within 90 days of the execution date of this Contract and semi-annually thereafter.

A. The updates may be in summary letter format, but should include information about:

- 1). The actions taken under this Contract during the previous reporting period;
- 2). Actions scheduled to be taken in the next reporting period;
- 3). Sampling, test results, and any other data in summary form, generated during the previous reporting period regardless of whether the data was collected pursuant to this Contract; and,
- 4). A description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

B. The Department's project manager may allow an extended schedule between updates based on site-specific conditions.

SCHEDULE

8. S&TG shall perform all activities and response actions pursuant to this Contract in an expeditious manner. In the event that circumstances dictate a delay in implementation of the response actions, the Department may require implementation of interim measures to stabilize the contamination or prevent unacceptable exposures. S&TG shall implement the interim measures in accordance with a Department-approved plan.

DECLARATION OF COVENANTS AND RESTRICTIONS

9. S&TG or its Beneficiaries shall enter, and record, a Declaration of Covenants and Restrictions (Covenant) for the Property if contamination exceeds residential standards after completing the response actions pursuant to this Contract. The recorded Covenant shall be incorporated into this contract as an Appendix and shall be implemented as follows:
- A. The Department shall prepare and sign the Covenant prior to providing it to S&TG. An authorized representative of S&TG or its Beneficiaries shall sign the Covenant within ten days of receipt. All signatures shall be witnessed, and signed and sealed by a notary public.
 - B. S&TG or its Beneficiaries shall file the executed Covenant with the Registrar of Deeds for the county where the Property is located.
 - C. S&TG or its Beneficiaries shall provide a copy of the recorded Covenant to the Department within sixty days of the Department's execution. The copy shall show the date and Book and Page number where the Covenant has been recorded.
 - D. In the event that contamination exceeds residential standards on a portion of the Property, S&TG or its Beneficiaries may create a new parcel that will be subject to the Covenant.
 - E. The Covenant shall be recorded on the master deed of any residential development planned for the Property and noted, or referenced thereafter, on each individual deed of property subdivided from the Property and subject to the Covenant.
 - F. The Covenant shall reserve a right of entry and inspection for S&TG or its Beneficiaries that may be transferred to another single individual or entity for purposes of compliance monitoring.

- 1). S&TG or its Beneficiaries shall ensure that the restrictions established by the Covenant remain on any subdivided property.
- 2). S&TG or its Beneficiaries shall create a procedure to provide a single point of contact responsible for documenting current land use and compliance with the Covenant regardless of the Property's ownership status. The procedure shall be reviewed and approved by the Department before it is implemented.

G. S&TG or its Beneficiaries, or the entity responsible for compliance monitoring, shall annually document the Property's land use and compliance with the Covenant to the Department. The report shall be submitted by May 31st in a manner and form prescribed by the Department.

H. The Department may amend the Covenant in response to changes in law, completion of remedial actions meeting the applicable standards in effect at the time, or if other circumstances of the Site change. An amendment may strengthen, relax, or remove restrictions based on the Regional Screening Tables in effect at that time; however, the Department shall not impose a more restrictive condition based solely on changes in the Regional Screening Tables. An amendment shall be duly executed and recorded with the county using procedures similar to those detailed above.

NOTIFICATION

10. All correspondence required to be given by either party to the other shall be in writing. Each party shall have a continuing obligation to identify a contact person, whose name, address, and telephone number must be updated to the other party, throughout the term of the contract. Notices by electronic mail or facsimile shall be acceptable if acknowledged in writing by the recipient; with the delivery date being the date of acknowledgment or earlier date if stated in the acknowledgment. All other forms of correspondence shall be deemed sufficiently given if delivered at the address shown below, or at such place or to such agent as the parties may from time to time designate in writing, by: 1) regular U.S. Mail; 2) Certified or Registered Mail; 3) Commercial

delivery service company; or, 4) hand delivery to the other party.

- A. All correspondence to the Department including two hardcopies of all Work Plans and reports, and one hardcopy of the Health and Safety Plan should be submitted to:

Jerry Stamps
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

- B. S&TG's designated contact person as of the effective date of this contract shall be:

Steve Gilliam
102 Lakewood Drive
Greenville, South Carolina 29607

FINANCIAL REIMBURSEMENT

11. S&TG or its Beneficiaries shall reimburse the Department for its public participation costs and for oversight costs of activities specific to this Contract as provided by S.C. statutes. The oversight costs shall include the direct and indirect costs incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract, and any future amendments thereof, and may include costs incurred by the Department prior to execution of this Contract. Invoices for oversight costs will be sent to S&TG on a quarterly basis. All costs are payable within thirty days of receipt of the Department's invoice submitted to:

Steve Gilliam
102 Lakewood Drive
Greenville, South Carolina 29607

ACCESS TO THE PROPERTY

12. S&TG agrees the Department has an irrevocable right of access to the Property after S&TG acquires the Property. This right of access remains until such time as

remediation is accomplished for unrestricted use and monitoring is no longer required, and shall extend to the Department's authorized representatives and all other persons performing response actions on the Property under the Department's oversight.

CERTIFICATE OF COMPLETION AND COVENANT NOT TO SUE

13. A Certificate of Completion will be issued on the Property as follows:

- A. S&TG shall request a Certificate of Completion after the response actions are completed and any required Covenants are recorded pursuant to this Contract. The request shall be in writing and shall report 1) the amount of soil that was removed or remediated on the Property; and 2) the cost of all environmental work conducted pursuant to this Contract.
- B. The Department will issue the Certificate of Completion with its covenant not to sue for matters expressly covered in this Contract upon determining that S&TG has successfully and completely complied with the Contract.
- C. The Department may issue a Provisional Certificate of Completion if the substantive response actions are complete but all activities on the Property cannot be completed due to site-specific circumstances.
 - 1). A Provisional Certificate of Completion will include specific performance standards that S&TG or its Beneficiaries shall continue to meet.
 - 2). The Provisional Certificate of Completion may include the Department's covenant not to sue for Existing Contamination; however, said covenant shall be automatically revoked if S&TG or its Beneficiaries do not satisfactorily complete the requirements of the Contract.

ECONOMIC BENEFITS REPORTING

14. S&TG or its Beneficiaries shall report information to the Department that demonstrates that the activities pursuant to this Contract have been beneficial to the State and community. The report shall be submitted within two years after the execution date of

this Contract, and annually until two years after redevelopment of the Property is complete. S&TG shall summarize the new operations at the Property, the number of jobs created, the amount of increase to the tax base, and the total amount invested in the site for property acquisition and capital improvements.

TRANSFER OF CONTRACT

15. The terms and conditions of this Contract apply to and inure to the benefit of the Department, S&TG, and its Beneficiaries. The following stipulations apply to ensure the transition of all responsibilities and benefits to successive Beneficiaries for any portion of the Property:

- A. S&TG or its Beneficiaries shall provide a copy of this Contract and applicable Appendices to any subsequent Beneficiary. Transmittal of the Contract copy may be via any commonly accepted mechanism.
- B. S&TG and its Beneficiaries shall not allow residential occupancy on any portion of the Property prior to obtaining the Certificate of Completion or a Provisional Certificate of Completion specific to that portion of the Property.
- C. If the Certificate of Completion has not been issued, S&TG or its Beneficiaries shall seek approval from the Department prior to assigning or transferring the protections and obligations of this Contract to a new entity. The protections shall not inure to an entity without the Department's approval. The Department shall not unreasonably withhold its approval upon receipt of documentation from the new entity showing it:
 - 1). Is eligible to be a Bona Fide Prospective Purchaser for the Property;
 - 2). Has sufficient resources to complete the activities of this Contract;
 - 3). Will not use the Property for activities that are inconsistent with the terms and conditions of this Contract;
 - 4). Will assume the protections and all obligations of this Contract and,
 - 5). Will, in the Department's sole discretion, provide a measurable benefit to the State and the community as a result of this transfer.

D. If the Certificate of Completion has been issued and the portion of the Property is subject to a Covenant or other ongoing obligation pursuant to this Contract, S&TG or its Beneficiaries shall provide written notification to the Department identifying the new entity within thirty days after the effective date of the ownership change or other possessory transfer of the Property.

- 1). The notification shall include a signed statement from the new entity that its use of the Property will remain consistent with the terms of the Contract, and that it will assume the protections and ongoing obligations of this Contract.
- 2). This requirement is waived for an entity acquiring a portion of the Property for individual residential use provided the Covenant is recorded on the master deed for the residential development, and the Department has approved the procedure for a single point of contact responsible for documenting current land use and compliance with the Covenant.

E. If a Certificate of Completion has been issued and the Property is not subject to a Covenant or other continued obligation pursuant to this Contract, no notification is required.

CONTRACT TERMINATION

16. S&TG, its Beneficiaries, and the Department each reserve the right to unilaterally terminate this Contract by giving thirty days advance written notice to the other party.

Termination shall be subject to the following:

A. The Department may terminate this Contract only for cause and shall provide opportunity for S&TG or its Beneficiaries to correct causes of termination, which may include, but is not limited to, the following:

- 1). Failure to complete the terms of this Contract;
- 2). Change in S&TG's or its Beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract;
- 3). Failure to submit timely payment for costs upon receipt of the Department's

invoice;

- 4). Failure of S&TG or its Beneficiaries to implement appropriate response actions for additional contamination or releases caused by S&TG or its Beneficiaries, or
- 5). Providing the Department with false or incomplete information or knowing failure to disclose material information;
- 6). Failure by S&TG or its Beneficiaries to obtain the applicable permits from the Department for the response actions or other activities undertaken at the Property pursuant to this contract; or,
- 7). Failure by S&TG or its Beneficiaries to make material progress toward the expansion, redevelopment, or reuse of the property as determined by the Department upon consideration of S&TG's or its Beneficiaries' marketing efforts, regional economic conditions, and other pertinent information on the Property.

- B. Should S&TG or its Beneficiaries elect to terminate, that party shall certify to the Department's satisfaction that any environmental or physical hazards created by S&TG or its Beneficiaries have been stabilized or mitigated such that the Property does not pose hazards to human health or the environment that did not exist before the response actions identified in this Contract.
- C. Termination of this Contract by any party does not end the obligations of S&TG or its Beneficiaries to pay costs incurred by the Department pursuant to this Contract. Payment for such costs shall become immediately due.
- D. The protections provided to S&TG or its Beneficiaries shall be null and void as to any party directly or indirectly involved in activities giving rise to termination of the Contract. This shall apply to that party's lenders, parents, subsidiaries, members, managers, employees, assigns, and successors, including lessees, heirs, devisees, and other parties taking an interest in the Property through that party. The protections will continue for any other covered party not involved with the action giving rise to the termination.

ENTITLEMENT OF PROTECTIONS AND BENEFITS

17. S&TG and its Beneficiaries are entitled to the protections and benefits provided by S.C. statutes as follows:

A. Effective on the date this Contract is first executed by the Department:

- 1). Protection from CERCLA contribution claims.
- 2). Protection from third-party claims for equitable relief or damages relating to "Existing Contamination" at the Site.

B. Effective on the date the Certificate of Completion is issued by the Department:

- 1). The Department's covenant not to sue S&TG and its Beneficiaries for Existing Contamination except for releases and consequences caused by S&TG or its Beneficiaries.
- 2). Specific tax credits or additional benefits expressly contingent in S.C. statutes on issuance of the Certificate of Completion.

C. These Protections and Benefits do not apply to any contamination, releases, and consequences caused by S&TG and its Beneficiaries. The Department retains all rights under State and Federal laws to compel S&TG and its Beneficiaries to perform or pay for response activity for contamination, releases and consequences created by S&TG or its Beneficiaries.

RESERVATION OF RIGHTS BY THE DEPARTMENT

18. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation other than S&TG and its Beneficiaries. The Department reserves the right to undertake future response actions at the Site and to seek to compel parties, other than S&TG and its Beneficiaries, to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that

may be taken or be required by the Department in exercising its authority under State and Federal law.

RESERVATION OF RIGHTS BY S&TG

19. S&TG retains all rights to assert claims in law or equity against any person, company, or entity with respect to the Property, except as limited elsewhere by this Contract. S&TG and its Beneficiaries specifically deny responsibility for response costs or damages resulting from Existing Contamination except for contamination, releases, and consequences they cause or contribute to the Site. However, S&TG and its Beneficiaries agree to undertake the requirements of this Contract.

BURDEN OF PROOF

20. S&TG and its Beneficiaries shall have the continuing obligation to demonstrate that any newly discovered contamination is not attributable to the Company or its Beneficiaries. S&TG and its Beneficiaries shall make this demonstration to the Department's satisfaction. For purposes of this clause, newly discovered contamination means finding types of contamination not previously identified at the Site or substantially higher concentrations of Existing Contamination.

LIMITATION OF CLAIMS BY S&TG AND ITS BENEFICIARIES

21. In consideration of the protections from the Department, S&TG and its Beneficiaries agree not to assert any claims or causes of action against the Department or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site. This limitation shall not extend to any claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions.

SIGNATORS

22. The signatories below hereby represent that they are authorized to and do enter into this contract on behalf of their respective parties.

THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL

BY: _____
Daphne G. Neel, Chief
Bureau of Land and Waste Management

DATE: _____

Approved by Office of General Counsel

DATE: _____

STEVE AND TIFFANY GILLIAM

BY: Steve Gilliam
Steve Gilliam Co-owner
Printed Name and Title

DATE: 3-9-09

BY: Tiffany Gilliam
Tiffany Gilliam Co-owner
Printed Name and Title

DATE: 3-9-09